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**UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA**

ROHNERT PARK CITIZENS TO  
ENFORCE CEQA, and DOES 1 through 5,  
inclusive,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
TRANSPORTATION, FEDERAL  
HIGHWAY ADMINISTRATION, and DOES  
6 through 10, inclusive,

Defendants.

CASE NUMBER C 007-4607 THE

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: July 14, 2008

Time: 1:30 p.m.

Ctrm: 12, 19<sup>th</sup> Fl, SF

Plaintiff Rohnert Park Citizens to Enforce CEQA and Defendants United  
States Department of Transportation and Federal Highway Administration  
(Federal Defendants) submit this joint Case Management Statement pursuant to  
the Clerk's Notice Scheduling Case Management Conference filed June 13, 2008.

**JOINT CASE MANAGEMENT STATEMENT**  
***Rohnert Park Citizens v. CALTRANS, et al. C 07-4607***

1           **1. Jurisdiction and Service:** Plaintiff contends that this Court has  
2 jurisdiction pursuant to 28 U.S.C. § 1331 and 1361. Venue is appropriate in the  
3 Northern District of California under 28 U.S.C. § 1391(e).  
4

5           Federal Defendants state that this Court has jurisdiction pursuant to 28  
6 U.S.C. § 1331, but does not agree that it has jurisdiction under 28 U.S.C. § 1361.  
7 The Office of the U.S. Attorney, Northern District of California and Federal  
8 Defendants have been served with process.  
9

10           **2. Facts:** Federal Defendants and the California Department of  
11 Transportation (Caltrans), which has been dismissed from this suit, proposed  
12 building the Wilfred Avenue Interchange Project in Rohnert Park, Sonoma County,  
13 California (the Project). The Project proposes to modify the interchange to  
14 connect Wilfred Avenue to Golf Course Drive by an under-crossing and to widen  
15 and realign U.S. Route 101 for HOV lanes from Rohnert Park Expressway  
16 Overcrossing to the Santa Rosa Avenue Over-crossing.  
17  
18

19           Federal Defendants and Caltrans prepared and released a joint Negative  
20 Declaration/Initial Study (CEQA) and Environmental Assessment/Finding of No  
21 Significant Impact (EA/FONSI), pursuant to the National Environmental Policy Act  
22 (NEPA).  
23

24           Plaintiff contends that the NEPA documents do not discuss the  
25 environmental impacts of a casino proposed in the vicinity of the Project.  
26

26 //

27 //

1           **3. Legal Issues:**

2           Plaintiff contends that the legal issues are(1) whether an Environmental  
3 Impact Statement ("EIS") is required for the Project pursuant to NEPA.  
4

5           Federal Defendants contend that the legal issue is whether the preparation  
6 of an EIS is required for the Project pursuant to NEPA.

7           **4. Motions:** Plaintiff does not anticipate making any motions.  
8

9           Federal Defendants state that the parties should stipulate to a proposed  
10 schedule for briefing and hearing of cross-motions for summary judgment and ask  
11 the Court to enter an order adopting that schedule.

12           **5. Amendment of Pleadings:** Plaintiff does not anticipate amending the  
13 complaint.  
14

15           **6. Evidence Preservation:** Plaintiff contends that this is a mandamus case  
16 tried on the administrative record. The administrative record was served on  
17 plaintiff on or about March 31, 2008.  
18

19           **7. Disclosures:** This is an action for review of an administrative record and  
20 exempt from the rule for initial disclosures, pursuant to Rule 26(a)(1)(E),  
21 Fed.R.Civ.P.

22           **8. Discovery:** Discovery is neither necessary nor appropriate in this action  
23 for review of an administrative record.  
24

25           **9. Class Actions:** This case is not a class action.

26           **10. Related Cases:** None.  
27  
28

1           **11. Relief:** Plaintiff requests (1) a Peremptory Writ of Mandate ordering  
2 defendants to set aside their respective actions and any approvals in furtherance  
3 of the project and to comply with NEPA, the APA, and other applicable laws prior  
4 to further consideration the project; (2) declaratory relief; (3) upon necessity and  
5 the filing of a request, that Court issue a temporary stay of the administrative  
6 approvals and/or a temporary restraining order and preliminary injunction; (4) a  
7 permanent injunction enjoining defendants from engaging in any activity  
8 connected with the approvals or the project unless and until this Court finds that  
9 the approvals are in full compliance with NEPA, the APA, and all other applicable  
10 laws; and (5) costs of suit and attorney's fees herein pursuant to the Equal Access  
11 to Justice Act, 28 U.S.C. §§ 2412(b), (d), or pursuant to any other applicable law.  
12  
13

14  
15           Federal Defendants request a summary judgment dismissing the Complaint  
16 and an award of costs.

17           **12. Settlement and ADR:** The parties participated in mediation on March  
18 11, 2008, but were unable to reach a settlement. Since Caltrans was dismissed  
19 from this action, plaintiffs filed a similar action against it in state court alleging  
20 CEQA violations. The mediator has contacted the parties since then to determine  
21 if further mediation is prudent. The parties are discussing the possibilities but do  
22 not believe a briefing and hearing schedule should be further postponed.  
23  
24

25           **13. Consent to Magistrate Judge For All Purposes:** Plaintiff consents to  
26 have a magistrate judge conduct all further proceedings including trial and entry of  
27 judgment.  
28

1 The United States respectfully declines to consent to magistrate judge for  
 2 further proceedings.

3  
 4 **14. Other References:** This case is not suitable for reference to binding  
 5 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

6 **15. Narrowing of Issues:** The issues are not amenable to being narrowed  
 7 by agreement or by motion. The evidence will be presented in the form of the  
 8 administrative record contained in volumes, indexed, and paginated.  
 9

10 **16. Expedited Schedule:** Plaintiff contends that this case can be handled  
 11 on an expedited basis with a streamlined procedure similar to those used in  
 12 motion practice. Plaintiff proposes the following schedule:

13  
 14 8/31 opening brief  
 15 9/29 opposition briefs  
 16 10/20 reply briefs  
 17 —/— hearing on the merits

18 Plaintiff's proposed schedule anticipates three (3) briefs: one opening brief, one  
 19 defendants' opposition brief; and one reply brief. It does not utilize the summary  
 20 judgment procedure. (Statements of undisputed facts are extraneous in  
 21 mandamus cases since the facts are constrained to the administrative record.)  
 22 Plaintiff does not anticipate the filing of simultaneous briefs, but a process similar  
 23 to motion practice.

24 Federal Defendants contend that Plaintiff's suggestion, proposing a briefing  
 25 schedule which allows *only* the Plaintiff to file a dispositive motion, is one-sided  
 26 and inherently unfair to Federal Defendants. Therefore, the Federal Defendants  
 27  
 28

1 object to the Plaintiff's proposed briefing schedule and instead, asks the Court  
2 enter an order providing for a briefing schedule for summary judgment which  
3 allows the Federal Defendants an opportunity to respond to the Plaintiff's motion  
4 for summary judgment by counter-moving for summary judgment in favor of the  
5 Federal Defendants. To facilitate that, the Federal Defendants repeat their  
6 suggestion that the parties enter into a stipulation for briefing cross-motions for  
7 summary judgment, taking their respective schedules and that of the Court into  
8 account, and ask the Court to sign an order which adopts the parties' stipulation  
9 for briefing and hearing of cross-motions for summary judgment. For example,  
10 such a stipulation could include a schedule, as follows:

- 13 - 9/22/2008: Plaintiff's file/serve motion for summary judgment;
- 14
- 15 - 10/13/2008: Federal Defendants file/serve memorandum in opposition to
- 16 Plaintiff's motion for summary judgment and Federal Defendants' motion for
- 17 summary judgment and memorandum in support of same;
- 18 - 11/3/2008: Plaintiff's file/serve reply memorandum in support of its
- 19 summary judgement motion and memorandum in opposition to Federal
- 20 Defendants' motion for summary judgment;
- 21 - 11/17/2008: Federal Defendants file/serve reply memorandum in support
- 22 of their motion for summary judgment;
- 23 - 12/8/2008: Hearing on cross-motions for summary judgment.

24 The Federal Defendants recommend the foregoing briefing plan, or a  
25 similar one, under an agreed-upon schedule, for dealing with cross-motions for  
26 summary judgment because it serves to identify and reduce the true points of  
27 contention and promotes judicial economy by:

1           1) Reducing the number of total briefs for handling cross-motions for  
2 summary judgment, from six (6) under the alternative simultaneous briefing plan  
3 to four (4) briefs, i.e., two per side; and

4           2) Allowing each party to respond to the arguments made by the adversary,  
5 thereby refining, sharpening, and reducing the number of disputed issues the  
6 Court truly needs to resolve.

7           The briefing of cross-motions for summary judgment for NEPA actions  
8 using a schedule similar to that proposed, above, has been routinely and  
9 successfully used by the Courts in this District to efficiently resolve such cases.  
10 The Federal Defendant suggests that it be adopted for use in this case, as well.

11           **18. Trial:** Trial is inappropriate and unnecessary in this record review case.  
12 The case should be handled on the briefs or motions for summary judgment  
13 based upon a schedule ordered by the Court. Plaintiff states that the hearing  
14 before the Court, whether on briefs or summary judgment, is expected to last 2  
15 hours or less.

16           **19. Disclosure of Non-party Interested Entities or Persons:** The parties  
17 have not filed the "Certification of Interested Entities or Persons." Plaintiff here  
18 certifies that it knows of no persons, firms, partnerships, corporations (including  
19 parent corporations) or other entities to have either: (I) a financial interest in the  
20 subject matter in controversy or in a party to the proceeding; or (ii) any other kind  
21 of interest that could be substantially affected by the outcome of the proceeding.

22           Federal Defendants know no such entities or persons.

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24 //

25  
26 //

**20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.** Plaintiff refers the Court to item 16 above. Federal Defendants know of no such matters.

Dated: July 7, 2008

Law Office of Rose M. Zoia

\_\_\_\_\_/s/\_\_\_\_\_  
Rose M. Zoia, counsel for Plaintiff Rohnert  
Park Citizens to Enforce CEQA

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\_\_\_\_\_/s/\_\_\_\_\_  
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